

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERROL BARRINGTON SCARLETT,

Petitioner,

v.

ORDER
08-CV-534

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY BUREAU
OF IMMIGRATION AND CUSTOMS
ENFORCEMENT, ET AL.,

Respondents.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. pursuant to 28 U.S.C. § 636(b)(1), on October 27, 2008. On July 22, 2008, petitioner filed a petition for writ of habeas corpus. On May 12, 2009, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that the writ be granted unless the respondents afford petitioner a hearing, within 30 days of the Order adopting the Report and Recommendation, before an Immigration Judge with the power to grant him bail unless the government establishes that petitioner is a flight risk or a danger to the community.


Both petitioner and respondents filed objections to the Report and Recommendation on June 5, 2009 and petitioner filed a response thereto. Oral argument on the objections was held on July 8, 2009.¹

¹The parties have agreed with each other that the Court retains jurisdiction over petitioner's motion even though petitioner currently is in the custody of the

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court modifies only that part of the Report and Recommendation setting forth the time after which the petition would be granted. The hearing in question should occur within 60 days, not 30 days. The Court otherwise adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, the petition is granted conditionally. A writ of habeas corpus will issue unless the respondents afford petitioner a hearing within 60 days of the entry of this Order. The Clerk of Court shall take all steps necessary to close the case.

IT IS SO ORDERED.


HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: July 10, 2009

Bergen County Sheriff in Hackensack, New Jersey. The Court has reviewed the issue and decides that it has jurisdiction for the reasons set forth in *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488 (S.D.N.Y. 2009).